

UNITED STATES OF AMERICA  
POSTAL REGULATORY COMMISSION  
WASHINGTON, DC 20268-0001

Before Commissioners:

Robert G. Taub, Acting Chairman;  
Nanci E. Langley, Vice Chairman;  
Mark Acton; and  
Tony Hammond

Competitive Product Prices  
Priority Mail Contract 41 (MC2012-39)  
Negotiated Service Agreement

Docket No. CP2012-47

ORDER APPROVING AMENDMENT TO  
PRIORITY MAIL NEGOTIATED SERVICE AGREEMENT

(Issued January 20, 2016)

I. INTRODUCTION

The Postal Service seeks to amend a Priority Mail negotiated service agreement.<sup>1</sup> For the reasons discussed below, the Commission approves the Amendment.

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<sup>1</sup> Notice of United States Postal Service of Change in Prices Pursuant to Amendment to Priority Mail Contract 41, December 31, 2015 (Notice). The Amendment is an attachment to the Notice (Amendment).

In Order No. 1445, the Commission approved the Priority Mail Contract 41 negotiated service agreement (Existing Agreement).<sup>2</sup> On December 31, 2015, the Postal Service filed notice that it has agreed to the Amendment to the Existing Agreement. On January 4, 2016, the Commission issued an order reopening this docket to consider the Amendment, appointing a Public Representative, and providing interested persons with an opportunity to comment.<sup>3</sup>

On January 7, 2016, CHIR No. 1 was issued to clarify the Postal Service's request and directed the Postal Service to respond by January 12, 2016.<sup>4</sup> CHIR No. 1 sought confirmation of the Postal Service's use of partial FY 2015 cost data in the financial model. The Postal Service filed a timely Response to CHIR No. 1.<sup>5</sup>

On January 13, 2016, the Public Representative filed a motion requesting to extend the deadline to file comments to January 19, 2016.<sup>6</sup> The Commission granted the Public Representative's request and extended the comment deadline to January 15, 2016.<sup>7</sup>

The Postal Service intends for the Amendment to become effective one business day after the date that the Commission completes its review of the Notice. Notice at 1. The Postal Service filed supporting financial documentation and a certified statement, as required by 39 C.F.R. § 3015.5. *Id.* The Postal Service asserts that the Amendment will not impair the ability of the contract to comply with 39 U.S.C. § 3633. Notice, Attachment B.

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<sup>2</sup> See Docket Nos. MC2012-39 and CP2012-47, Order Adding Priority Mail Contract 41 to the Competitive Product List, August 20, 2012 (Order No. 1445). The contract was later amended. See Order No. 2423, Order Approving Amendment to Priority Mail Contract 41 Negotiated Service Agreement, April 1, 2015.

<sup>3</sup> Order No. 2971, Notice and Order Concerning Amendment to a Priority Mail Negotiated Service Agreement, January 4, 2016.

<sup>4</sup> Chairman's Information Request No. 1, January 7, 2016, at 1 (CHIR No. 1).

<sup>5</sup> Responses of the United States Postal Service to Chairman's Information Request No. 1, January 12, 2016 (Responses to CHIR No. 1).

<sup>6</sup> Public Representative Motion for Extension of Comment Deadline, January 13, 2016, at 1.

<sup>7</sup> Order No. 3026, Order Granting Motion for Extension of Comment Deadline, January 13, 2016, at 2.

## II. COMMENTS

Comments were filed by the Public Representative.<sup>8</sup> No other person submitted comments. The Public Representative reviewed the Amendment, the Existing Agreement, the Responses to CHIR No. 1, and the financial model filed under seal. PR Comments at 3. Based on that review, she concludes that the Amendment will not materially affect the cost coverage of Priority Mail Contract 41, “especially in terms of falling below 100 percent.” *Id.* She states that “it appears that the contract is expected to generate sufficient revenues to cover costs and thereby satisfy the requirements of 39 U.S.C. § 3633(a).” *Id.*

The Public Representative notes that the Responses to CHIR No. 1 “raise some concern about the appropriate cost input used for Contract 41 and functionally equivalent contracts.” *Id.* She states that “the lack of detail in the Postal Service’s [Responses to CHIR No. 1] raises concern for the costing of Contract 41” and that “[t]he Postal Service should investigate and disclose why unreliable recording of data during the holiday shipping season is exclusive to Inter-SCF cost per mile.” *Id.* However, she notes that this concern is mitigated because her analysis shows that Priority Mail Contract 41 is expected to cover costs “when the average Inter-SCF cost per mile input is based on the entire FY2015 data.” *Id.* at 4. She further states that the Commission will be able to review the “cost inputs and the financial results for Contract 41 in the FY2015 Annual Compliance Determination (ACD) report for compliance with 39 U.S.C. § 3633(a).” *Id.*

## III. COMMISSION ANALYSIS

The Commission has reviewed the Notice, the accompanying materials filed under seal, and the comments filed by the Public Representative.

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<sup>8</sup> Public Representative Comments on Postal Service Notice of Amendment to Priority Mail Contract 41, January 14, 2016 (PR Comments).

*Cost considerations.* The Commission reviews competitive product prices to ensure that each product covers its attributable costs, does not cause market dominant products to subsidize competitive products, and contributes to the Postal Service's institutional costs. 39 U.S.C. § 3633(a); 39 C.F.R. §§ 3015.5 and 3015.7. As long as the revenue generated by the product exceeds its attributable costs, the product is unlikely to reduce the contribution of competitive products as a whole or to adversely affect the ability of competitive products as a whole to contribute an appropriate share of institutional costs. In other words, if a product covers its attributable costs, it is likely to comply with 39 U.S.C. § 3633(a).

The Amendment changes prices under Priority Mail Contract 41 as contemplated by the contract's terms. Notice at 1. Based on a review of the record, the Commission finds that the Existing Agreement, as amended, should cover its attributable costs. 39 U.S.C. § 3633(a)(2). For this reason, it finds that the Existing Agreement, as amended, should not result in competitive products as a whole being subsidized by market dominant products, in accordance with 39 U.S.C. § 3633(a)(1). Similarly, it finds the amended agreement is unlikely to prevent competitive products as a whole from contributing an appropriate share of institutional costs, consistent with 39 U.S.C. § 3633(a)(3). See *also* 39 C.F.R. § 3015.7(c). Accordingly, a preliminary review of the Amendment indicates it is consistent with section 3633(a). In addition, the annual rate adjustment provision in section I.G. of the Existing Agreement should allow the amended agreement's revenues to cover costs for the duration of its term.<sup>9</sup> Based on the Postal Service's Responses to CHIR No. 1, the Commission will also review the cost coverage of the amended agreement in the Annual Compliance Determination to ensure that rates continue to cover costs.

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<sup>9</sup> Docket Nos. MC2012-39 and CP2012-47, Request of the United States Postal Service to Add Priority Mail Contract 41 to Competitive Product List and Notice of Filing (Under Seal) of Unredacted Governors' Decision, Contract, and Supporting Data, August 8, 2012, Attachment B at 2 (Request); see *also* Notice of United States Postal Service of Amendment to Priority Mail Contract 41, with Portions Filed Under Seal, March 20, 2015, Attachment A at 1 (March 20, 2015, Notice).

*Other considerations.* The Postal Service states that the Amendment shall become effective one business day after the date that the Commission completes its review. Notice at 1. The Existing Agreement, as amended, is set to expire five years after the initial effective date unless, among other things, either party terminates the contract with 30 days' written notice to the other party or it is renewed by mutual agreement.<sup>10</sup>

If the Existing Agreement, as amended, is terminated prior to the scheduled expiration date, the Postal Service shall promptly notify the Commission.

In conclusion, the Commission approves the Existing Agreement, as amended.

#### IV. ORDERING PARAGRAPHS

*It is ordered:*

1. The Commission approves the Priority Mail Contract 41 negotiated service agreement, as amended.
2. The Postal Service shall notify the Commission if the Existing Agreement, as amended, terminates prior to the scheduled expiration date.

By the Commission.

Stacy L. Ruble  
Secretary

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<sup>10</sup> March 20, 2015, Notice, Attachment A at 1; see *a/so* Request, Attachment B at 3. Should both parties agree to renew the agreement, any such renewal is required to follow the requirements of 39 U.S.C. § 3633 and the Commission's implementing regulations of 39 C.F.R. part 3015.